right to the soil or fisheries of an inland, non-tidal lake. Other cases supporting this principle are: *Venning* v. *Steadman,* 9 Can. Sup. Ct. Rep. 206; *Rowell* v. *Doyle,* 131 Mass. 474; *Payne* v. *Sheets,* 75 Vt. 335; *Brown* v. *Cunningham,* 82 Ia. 512, 12 L. R. A. 583; *Burrows* v. *McDermott,* 73 Me. 441; *Priewe* v. *Improvement Co.,* 93 Wis. 534, 33 L. R. A. 645; *Blades* v. *Hicks,* 11 H. L. Cases 621. These authorities establish the proposition that the state ownership over fish and game is not such proprietary interest as will authorize a sale thereof by the state or the granting of special interests therein, but is solely in trust for the public and for the purpose or regulation and preservation for the common use. We must concede that the state has merely a right to regulate fish and game to the extent of protecting the public, and that when a person has acquired a property right in land, such right ought not to be taken away under the guise of police regulation and the discrimination made in this case between residents and non-residents ought to be within the "equal protection of the laws" clause. See on this point *Eldridge* v. *Trezivant,* 160 U. S. 452, 40 L. Ed. 490.

CONTRIBUTORY NEGLIGENCE—PASSENGER ON CAR PLATFORM.—Plaintiff was a passenger on defendant's excursion train. All seats and aisles were full and passengers were on the platforms. Plaintiff stood in the aisle of the smoker until he became faint, as a result of bad air. Not being able to get near a window, he went out on the platform, where he became unconscious and fell off. *Held,* he was not guilty of contributory negligence as matter of law. *Morgan* v. *L. S. & M. S. Ry. Co.* (1904), — Mich. —, 101 N. W. Rep. 836.

The decisions are at variance as to whether riding upon the platform under such circumstances is contributory negligence as matter of law. It has been held not to be in *Willis* v. *L. I. Ry. Co.,* 34 N. Y. 670, and *Werle* v. *L. I. R. R. Co.,* 98 N. Y. 650. In *Ward* v. *C. M. & St. P. Ry. Co.,* 102 Wis. 215, 78 N. W. 442, it is held to be a question for the jury. In *Rolette* v. *G. N. Ry.,* 97 N. W. 431, it is held negligence if there be standing room in the aisles. Defendant's contention that riding on the platform is prima facie negligent seems to be supported by the weight of authority and is based on the following cases: *Ry. Co.* v. *Moneyhun,* 146 Ind. 147, 34 L. R. A. 141; *Worthington* v. *Central Vt. Ry. Co.,* 64 Vt. 107, 15 L. R. A. 326; *Hickey* v. *B. & L. R. R. Co.,* 14 Allen 429; *C. & A. R. R. Co.* v. *Hoosey,* 99 Pa. St. 492, and *Rolette* v. *G. N. Ry.* supra. But the court held that all these cases recognize the rule that if the passenger is necessarily on the platform because of conditions created by the railroad company, he is not precluded from recovering damages. This tends to raise a question in each case as to what constitutes necessity. Two of the justices dissent on the ground that plaintiff was justified by no serious necessity.

CONVEYANCE—STANDING TIMBER—RECORDING—BONA FIDE PURCHASER.—Plaintiff claims title to logs cut, but not removed, under an unrecorded written extension of a prior recorded contract for the purchase of standing timber. The recorded contract recited a full payment of the consideration. Defendant

claimed under an unrecorded land contract entered into after the extension of the timber contract, possession being taken a few weeks before the timber was cut, although all of the stipulations of the contract were not performed nor the deed given until after the timber was cut. Neither party had actual notice of the rights of the other. *Held,* the defendant was entitled to the logs. *J. Neils Lumber Co.* v. *Hines* (1904), — Minn. —, 101 N. W. Rep. 959.

The court admitted that the plaintiff had a vested interest in the timber. *Pine County* v. *Tozer,* 56 Minn. 288. But considered that he was bound by notice of defendant's interest by reason of defendant's possession. It is well established that a subsequent purchaser is so bound as against a vendee rightfully in possession under an executory contract of sale. *Daniels* v. *Davidson,* 17 Ves. Jr. 432; *Wehn* v. *Fall,* 55 Nebr. 547. The general rule is, however, that an executory contract for the sale of land does not imply a right to possession before the time fixed for the completion of the contract and the delivery of the deed. *Chappell* v. *McKnight,* 108 Ill. 570; *Smith* v. *Jones,* 21 Utah 270; *Niles* v. *Phinney,* 90 Me. 122. Unless the conditions are performed, possession of the purchaser is possession of the vendor. WARVELLE VENDORS, § 183. Under the ruling of a number of courts the plaintiff lost all right to the logs by failure to remove them within the time limited by his contract. *Bunch* v. *Lumber Co.* (N. C.), 46 S. E. Rep. 24; *Boisaubin* v. *Reed,* 1 Abb. App. Dec. 161. But by the preponderance of authority such provisions are construed as mere covenants giving a right to remove all logs cut before the expiration of the contract, but affording damages for the breach. *McComber* v. *Ry. Co.,* 108 Mich. 491; *Hicks* v. *Smith,* 77 Wis. 146; *Hodges* v. *Buell* (Mich.), 95 N. W. Rep. 1078; *Emerson* v. *Shores,* 95 Me. 237; *Null* v. *Elliott,* 52 W. Va. 229. Plaintiff having this right to remove the logs after the expiration of his contract, and having a prior equity to that of the defendant, of which equity the defendant knew before he performed all the stipulations of his contract or received his deed, it would seem that plaintiff's title should be paramount. *Hoover* v. *Donally,* 3 Hen. & M. 316; *Simms* v. *Richardson,* 2 Litt. (Ky.) 275; *Jewett* v. *Palmer,* 7 John. Ch. 64; *Lain* v. *Morton* (Ky), 63 S. W. Rep. 286.

DEEDS—BUILDING RESTRICTIONS—EASEMENTS.—A deed from B. to F. contained the following restriction, "The dwelling house to be built on the granted premises shall be set back five feet from the line of Arlington street, and shall not exceed 65 feet in depth from said street, so as to correspond in this particular with my adjoining house. The front elevation and the material used in the construction of the front on Arlington street shall correspond with my house adjoining, etc." F., the grantee, did not build, but conveyed the premises to C., who built in accordance with the restriction. In this statutory action to determine the validity, nature and extent of the foregoing restriction between subsequent owners, *Held,* that the agreement amounted to an equitable restriction, namely, an easement in the granted premises appurtenant to the adjoining house and land. Further, such stipulation was only enforceable so long as the first house to be built upon the property conveyed